

109TH CONGRESS
1ST SESSION

S. 1297

To amend title XVIII of the Social Security Act to reduce the work hours and increase the supervision of resident-physicians to ensure the safety of patients and resident-physicians themselves.

IN THE SENATE OF THE UNITED STATES

JUNE 23, 2005

Mr. CORZINE (for himself, Mr. BINGAMAN, and Ms. LANDRIEU) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XVIII of the Social Security Act to reduce the work hours and increase the supervision of resident-physicians to ensure the safety of patients and resident-physicians themselves.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Patient and Physician
5 Safety and Protection Act of 2005”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) The Federal Government, through the medi-
2 care program, pays approximately \$8,000,000,000
3 per year solely to train resident-physicians in the
4 United States, and as a result, has an interest in as-
5 suring the safety of patients treated by resident-phy-
6 sicians and the safety of resident-physicians them-
7 selves.

8 (2) Resident-physicians spend as much as 30 to
9 40 percent of their time performing activities not re-
10 lated to the educational mission of training com-
11 petent physicians.

12 (3) The excessive numbers of hours worked by
13 resident-physicians is inherently dangerous for pa-
14 tient care and for the lives of resident-physicians.

15 (4) The scientific literature has consistently
16 demonstrated that the sleep deprivation of the mag-
17 nitude seen in residency training programs leads to
18 cognitive impairment.

19 (5) A substantial body of research indicates
20 that excessive hours worked by resident-physicians
21 lead to higher rates of medical error, motor vehicle
22 accidents, depression, and pregnancy complications.

23 (6) The medical community has not adequately
24 addressed the issue of excessive resident-physician
25 work hours.

1 (7) The Federal Government has regulated the
2 work hours of other industries when the safety of
3 employees or the public is at risk.

4 (8) The Institute of Medicine has found that as
5 many as 98,000 deaths occur annually due to med-
6 ical errors and has suggested that 1 necessary ap-
7 proach to reducing errors in hospitals is reducing
8 the fatigue of resident-physicians.

9 **SEC. 3. REVISION OF MEDICARE HOSPITAL CONDITIONS OF**
10 **PARTICIPATION REGARDING WORKING**
11 **HOURS OF MEDICAL RESIDENTS, INTERNS,**
12 **AND FELLOWS.**

13 (a) IN GENERAL.—Section 1866 of the Social Secu-
14 rity Act (42 U.S.C. 1395cc) is amended—

15 (1) in subsection (a)(1)—

16 (A) by striking “and” at the end of sub-
17 paragraph (U);

18 (B) by striking the period at the end of
19 subparagraph (V) and inserting “, and”; and

20 (C) by inserting after subparagraph (V)
21 the following new subparagraph:

22 “(W) in the case of a hospital that uses the
23 services of postgraduate trainees (as defined in sub-
24 section (k)(4)), to meet the requirements of sub-
25 section (k).”; and

1 (2) by adding at the end the following new sub-
2 section:

3 “(k)(1)(A) In order that the working conditions and
4 working hours of postgraduate trainees promote the provi-
5 sion of quality medical care in hospitals, as a condition
6 of participation under this title, each hospital shall estab-
7 lish the following limits on working hours for postgraduate
8 trainees:

9 “(i) Subject to subparagraphs (B) and (C),
10 postgraduate trainees may work no more than a
11 total of 24 hours per shift.

12 “(ii) Subject to subparagraph (C), postgraduate
13 trainees may work no more than a total of 80 hours
14 per week.

15 “(iii) Subject to subparagraph (C), post-
16 graduate trainees—

17 “(I) shall have at least 10 hours between
18 scheduled shifts;

19 “(II) shall have at least 1 full day out of
20 every 7 days off and 1 full weekend off per
21 month;

22 “(III) subject to subparagraph (B), who
23 are assigned to patient care responsibilities in
24 an emergency department shall work no more
25 than 12 continuous hours in that department;

1 “(IV) shall not be scheduled to be on call
2 in the hospital more often than every third
3 night; and

4 “(V) shall not engage in work outside of
5 the educational program that interferes with
6 the ability of the postgraduate trainee to
7 achieve the goals and objectives of the program
8 or that, in combination with the program work-
9 ing hours, exceeds 80 hours per week.

10 “(B)(i) Subject to clause (ii), the Secretary shall pro-
11 mulgate such regulations as may be necessary to ensure
12 quality of care is maintained during the transfer of direct
13 patient care from 1 postgraduate trainee to another at the
14 end of each shift.

15 “(ii) Such regulations shall ensure that, except in the
16 case of individual patient emergencies, the period in which
17 a postgraduate trainee is providing for the transfer of di-
18 rect patient care (as referred to in clause (i)) does not
19 extend such trainee’s shift by more than 3 hours beyond
20 the 24-hour period referred to in subparagraph (A)(i) or
21 the 12-hour period referred to in subparagraph
22 (A)(iii)(III), as the case may be.

23 “(C) The work hour limitations under subparagraph
24 (A) and requirements of subparagraph (B) shall not apply

1 to a hospital during a state of emergency declared by the
 2 Secretary that applies with respect to that hospital.

3 “(2) The Secretary shall promulgate such regulations
 4 as may be necessary to monitor and supervise post-
 5 graduate trainees assigned patient care responsibilities as
 6 part of an approved medical training program, as well as
 7 to assure quality patient care.

8 “(3) Each hospital shall inform postgraduate trainees
 9 of—

10 “(A) their rights under this subsection, includ-
 11 ing methods to enforce such rights (including so-
 12 called whistle-blower protections); and

13 “(B) the effects of their acute and chronic sleep
 14 deprivation both on themselves and on their pa-
 15 tients.

16 “(4) For purposes of this subsection, the term ‘post-
 17 graduate trainee’ means a postgraduate medical resident,
 18 intern, or fellow.”.

19 (b) DESIGNATION.—

20 (1) IN GENERAL.—The Secretary of Health and
 21 Human Services (in this subsection referred to as
 22 the “Secretary”) shall designate an individual within
 23 the Department of Health and Human Services to
 24 handle all complaints of violations that arise from a
 25 postgraduate trainee (as defined in paragraph (4) of

1 section 1886(k) of the Social Security Act, as added
2 by subsection (a), who reports that the hospital op-
3 erating the medical residency training program for
4 which the trainee is enrolled is in violation of the re-
5 quirements of such section.

6 (2) GRIEVANCE RIGHTS.—A postgraduate train-
7 ee may file a complaint with the Secretary con-
8 cerning a violation of the requirements under such
9 section 1886(k). Such a complaint may be filed
10 anonymously. The Secretary may conduct an inves-
11 tigation and take corrective action with respect to
12 such a violation.

13 (3) ENFORCEMENT.—

14 (A) CIVIL MONEY PENALTY ENFORCE-
15 MENT.—Subject to subparagraph (B), any hos-
16 pital that violates the requirements under such
17 section 1886(k) is subject to a civil money pen-
18 alty not to exceed \$100,000 for each medical
19 residency training program operated by the hos-
20 pital in any 6-month period. The provisions of
21 section 1128A of the Social Security Act (other
22 than subsections (a) and (b)) shall apply to civil
23 money penalties under this paragraph in the
24 same manner as they apply to a penalty or pro-
25 ceeding under section 1128A(a) of such Act.

1 (B) CORRECTIVE ACTION PLAN.—The Sec-
2 retary shall establish procedures for providing a
3 hospital that is subject to a civil monetary pen-
4 alty under subparagraph (A) with an oppor-
5 tunity to avoid such penalty by submitting an
6 appropriate corrective action plan to the Sec-
7 retary.

8 (4) DISCLOSURE OF VIOLATIONS AND ANNUAL
9 REPORTS.—The individual designated under para-
10 graph (1) shall—

11 (A) provide for annual anonymous surveys
12 of postgraduate trainees to determine compli-
13 ance with the requirements under such section
14 1886(k) and for the disclosure of the results of
15 such surveys to the public on a medical resi-
16 dency training program specific basis;

17 (B) based on such surveys, conduct appro-
18 priate on-site investigations;

19 (C) provide for disclosure to the public of
20 violations of and compliance with, on a hospital
21 and medical residency training program specific
22 basis, such requirements; and

23 (D) make an annual report to Congress on
24 the compliance of hospitals with such require-

1 ments, including providing a list of hospitals
2 found to be in violation of such requirements.

3 (c) WHISTLEBLOWER PROTECTIONS.—

4 (1) IN GENERAL.—A hospital covered by the re-
5 quirements of section 1866(k) of the Social Security
6 Act, as added by subsection (a), shall not penalize,
7 discriminate, or retaliate in any manner against an
8 employee with respect to compensation, terms, con-
9 ditions, or privileges of employment, who in good
10 faith (as defined in paragraph (2)), individually or
11 in conjunction with another person or persons—

12 (A) reports a violation or suspected viola-
13 tion of such requirements to a public regulatory
14 agency, a private accreditation body, or man-
15 agement personnel of the hospital;

16 (B) initiates, cooperates, or otherwise par-
17 ticipates in an investigation or proceeding
18 brought by a regulatory agency or private ac-
19 creditation body concerning matters covered by
20 such requirements;

21 (C) informs or discusses with other em-
22 ployees, with a representative of the employees,
23 with patients or patient representatives, or with
24 the public, violations or suspected violations of
25 such requirements; or

1 (D) otherwise avails himself or herself of
2 the rights set forth in such section or this sub-
3 section.

4 (2) GOOD FAITH DEFINED.—For purposes of
5 this subsection, an employee is deemed to act “in
6 good faith” if the employee reasonably believes—

7 (A) that the information reported or dis-
8 closed is true; and

9 (B) that a violation has occurred or may
10 occur.

11 (d) EFFECTIVE DATE.—The amendments made by
12 subsection (a) shall take effect on the first July 1 that
13 begins at least 1 year after the date of enactment of this
14 Act.

15 **SEC. 4. ADDITIONAL FUNDING FOR HOSPITAL COSTS.**

16 There are hereby appropriated to the Secretary of
17 Health and Human Services such amounts as may be re-
18 quired to provide for additional payments to hospitals for
19 their reasonable additional, incremental costs incurred in
20 order to comply with the requirements imposed by this Act
21 (and the amendments made by this Act).

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